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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/585,560

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Klaus Grohe

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IP DEPARTMENT
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EXAMINER

YOUNKINS, KAREN L

ART UNIT

PAPER NUMBER

3751

MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/585,560	Applicant(s) GROHE, KLAUS	
	Examiner KAREN YOUNKINS	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,7-15,17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 7-15, 17, and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the mounting bracket being open along a rear side must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. Claims 1, 3, 7-15, 17, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Regarding Claim 1, new claim language “and the mounting bracket is open along a rear side toward the wall” renders the claim indefinite. It is unclear what opening the applicant is referring to. The only opening shown in the drawings is 32, shown on the additional bracket 30, but additional bracket 30 is not the same bracket that is curved and comprises a ‘conical bracket’ as implied in the claim. Clarification is required.
4. Further regarding Claim, Claim 1 recites “the mounting bracket is open along a rear side toward the wall”. Such recitation renders the claim indefinite because such recitation is inferentially included as part of the claimed combination of elements (wall rod, wall support, mounting bracket, and wall). Should applicant intend “the wall” to be a positive element of the claimed combination, then antecedent basis should be provided therefor. If not, it is suggested that applicant adopts language such as – adapted to be—when relating claimed elements to the “wall”. Claims 23, 7-15, 17, and 19 are dependent on claim 1 and are likewise indefinite.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3, 7-8, 12, and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of US Patent Application Publication 2003/0221251 to Tse in view of USPN 5,833,192 to Buhrman.

7. Regarding Claims 1, 3, 7, and 14-15, Tse teaches a wall rod 1, and a mounting bracket 4 that comprises a lengthwise extension of the wall rod and is formed as a continuation extending the wall rod upwardly (from the position of the wall rod below 4, for example shown where reference character '1' points in figure 1). The mounting bracket 4 is curved and comprises an open pipe 14 with an opening at an end/along the pipe that forms a 'slot'. The opening/slot is formed and sized for receiving shower attachment 12, as discussed in pp [0012]. The wall bracket is 'pivotably' attached to the wall rod as the bracket is slidably inserted onto 2 and may pivot freely until the clamp portion 7 attaches the two components together. The bracket may pivot freely again when the button 13 is depressed to release the clamp. A longitudinal axis of the wall rod is where the bracket may pivot during operation. A centerline of the mounting bracket lies in a plane that includes a longitudinal axis of the wall rod. Further, the mounting bracket 4 is open along a 'rear side toward the wall' in that it is open around the wall rod below 4.

Tse fails to show a wall support, and further fails to show a conical bracket at an end of the mounting bracket.

Burhman, however, teaches double-bent wall supports 42/44 resulting in the ability to affix the rod to a bathroom wall for use in a shower.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have included a double-bent wall support as taught by Burhman in the shower support of Tse to affix the support to a shower wall. It would have been further obvious to one having ordinary skill in the art to have modified the shape of the pipe 14 to correspond with the shape of the shower attachment being inserted into the pipe. As discussed in pp [0012] of Tse the opening is shaped to provide a frictional connection between the inserted piece and the opening. Therefore it would have been obvious to one having ordinary skill in the art to have provided the opening with conical like portion to provide a frictional fit if the shower attachment to be inserted and held by the bracket was correspondingly shaped. Further, a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

8. Regarding claim 12, as discussed supra, further the wall support and the mounting bracket 4 allow for the outlet hose to hang freely downwards between the wall rod and a wall.

9. Regarding Claim 8, as discussed supra, further the wall support is 'laterally opposite' the rod. Burhman teaches the double-bent wall supports 42/44 and the wall rod is at least half the diameter D of the hose H. It would have been further obvious to have made the distance at least half the diameter as claimed to allow for the hose to go behind the rod and keep it out of the way of the user.

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10. The initial statement of intended use (claim 1 line 1) and all other functional limitations thereto, have been fully considered but do not appear to impose any patentably distinguishing structure over that disclosed by the modified Tse.

11. Claims 9-11, 13 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tse and Burhman as applied to claim 1 above and further in view of USPN 4,726,552 to Warshawsky.

12. As previously discussed, Tse discloses all of the claimed features except for a swivel bearing located in the wall support.

Warshawsky teaches a wall support 80/90, which includes a swivel bearing 140 for a shower outlet holder 60.

It would have been obvious to one of ordinary skill in the art to replace the bearing in Tse with the alternative bearing in Warshawsky because both bearings provide a rotating motion and the Warshawsky bearing allows for the mounting bracket to be connected to the top of the wall rod and prevent the mounting bracket from reaching the wall. Tse as now modified teaches a stepped/indexed swivel motion as claimed.

13. Regarding Claims 13 and 19, as previously discussed, further Tse fails to teach an additional bracket located on the wall rod, wherein the additional bracket swivels around the wall rod. The examiner takes official notice that it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided an additional bracket on the wall rod to provide increased support between the wall rod and the wall. It would have been further obvious to have provided this support with a swivel

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bearing as taught by Warshawsky for the reasons discussed above. The brackets are adjustable in height as the entire wall bracket system is capable of being moved up and down in height and mounted at various points on a wall.

Response to Arguments

14. Applicant's arguments filed 3/7/2011 have been fully considered but they are not persuasive.

15. The examiner would like to thank the applicant for the discussion of the reference number 1 in the response filed 3/7/2011 and the amended claim language from cone to conical bracket. In response to these changes and statements, the previous drawing objections have been withdrawn. It is noted that the examiner disagrees that the tapering receptacle (claimed term –conical bracket) is shown to be open in the back.

16. Claim 12 has been amended in such a manner to obviate the previous rejection of Claim 12 regarding the term 'hose guide'. The amendments to the terms "a substantially perpendicular surface", "pipe", and "cone" also obviate their previous corresponding rejections under 35 U.S.C. 112.

17. At pages 8 and 11, the applicant has asserted that Tse fails to disclose a bracket that is a lengthwise upward extension of a wall rod. It is respectfully submitted that, as discussed in the rejection above, a mounting bracket 4 that comprises a lengthwise extension of the wall rod and is formed as a continuation extending the wall rod upwardly (from the position of the wall rod below 4, for example shown where reference character '1' points in figure 1).

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18. Further at page 8 the applicant states "There is no reason to consider eliminating structures that Tse provides". The examiner is unclear as to what the applicant intends to refer to with this statement, it is the position of the examiner that the rejection above does not consider eliminating structures that Tse provides.

19. At page 8 the applicant has further asserted that Buhrman fails to disclose an upward extension. However, it is respectfully submitted that the above rejection has not used Buhrman to provide this structure, Buhrman is used as a reference teaching double-bent support.

20. At page 9, the applicant has asserted that tubes 30,32 or Buhrman are not wall attached rods. It is respectfully submitted that this argument is not commensurate with the scope of the claims. The claim language "wall support for fixing" required support to be capable of being fixed on a wall. It is noted that the applicant has not clearly structurally claimed a wall, as discussed in the 112, second paragraph, rejections above. The tubes 30,32 are more than capable of being used as wall support portions, and are in fact taught to do so in a shower.

21. Further at page 9, the applicant has asserted that the mounted bracket of Tse is not structured or intended to function as a mounting bracket for the grip of a hand shower. This argument is not commensurate with the scope of the claims as the grip of a hand shower does not appear in the claims.

22. At page 10, the applicant stated "Even if one selected arbitrary lines as longitudinal axes and centerlines.. it is not possible to match the claim language to Tse'd device. The examiner believes the applicant is referring to the claim language

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“whereas a centerline of the mounting bracket lies in a plane that includes a longitudinal axis of the wall rod”. The examiner further disagrees that arbitrary selection of longitudinal axes and centerlines of the two structural elements do in fact meet this claim language. It is noted that a line straight through the center of the mounting bracket lies in a number of the infinitely many longitudinal planes of the wall rod.

23. Applicant’s arguments with respect to claim 12 are moot in view of the new rejection.

24. In response to applicant's argument that Warhowsky is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Warhowsky is reasonably pertinent to the particular problem with which the applicant was concerned, having a swivel mounting structure, and also in the field of applicant's endeavor of a support system.

25. At page 11 the applicant has asserted there would be no structure holding Tse's wall rod to the shower pipe if Tse bracket 4 was replaced with Warhowsky's pivoting device. It is respectfully submitted that the rejection above does not suggesting replacing bracket 4.

26. It is respectfully noted that mere allegation of patentability or that the examiner is incorrect, without providing basis for such statements, are not persuasive.

Conclusion

27. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN YOUNKINS whose telephone number is (571)270-7417. The examiner can normally be reached on Monday through Friday 7:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. Y./

Examiner, Art Unit 3751

/Gregory L. Huson/

Supervisory Patent Examiner, Art Unit 3751